

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chris Olmsted	Team: Squad #9	CCRB Case #: 202002284	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/10/2020 8:48 PM, Tuesday, 03/10/2020 11:37 PM, Tuesday, 12/22/2020 12:05 PM	Location of Incident: In front of § 87(2)(b) 43rd Precinct Stationhouse; at the CCRB	Precinct: 43	18 Mo. SOL 9/10/2021	EO SOL 4/27/2022	
Date/Time CV Reported Tue, 03/10/2020 9:38 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/20/2020 8:10 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LSA David Vasquez	00000	916845	SRG 2
2. POM Edward Bogucki	16654	957394	SRG 2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luis Ortiz	01133	956142	SRG 2

Officer(s)	Allegation	Investigator Recommendation
A.POM Edward Bogucki	Abuse: On March 10, 2020, in front of § 87(2)(b) in the Bronx, Police Officer Edward Bogucki threatened § 87(2)(b) with the use of force.	
B.LSA David Vasquez	Abuse: On March 10, 2020, in front of § 87(2)(b) in the Bronx, Lieutenant David Vasquez searched the vehicle in which § 87(2)(b) was an occupant.	
C.POM Edward Bogucki	Abuse: On March 10, 2020, outside the 43rd Precinct Stationhouse, Police Officer Edward Bogucki searched the vehicle in which § 87(2)(b) was an occupant.	
D.LSA David Vasquez	Untruthful Stmt.: On December 22, 2020, at the CCRB, Lieutenant David Vasquez provided a misleading official statement to the CCRB.	

Case Summary

§ 87(2)(b) filed this complaint with IAB on March 10, 2020 on behalf of himself, his son, § 87(2)(b) and his daughter, § 87(2)(b). IAB filed it under Log § 87(2)(b) and forwarded it to the CCRB on March 20, 2020.

On March 10, 2020, at approximately 8:48 p.m., in front of § 87(2)(b) in the Bronx, Police Officer Edward Bogucki, of SRG 2, allegedly threatened § 87(2)(b) with the use of force (**Allegation A: Abuse of Authority; § 87(2)(g)**) Lieutenant David Vasquez, of SRG 2, searched a vehicle operated by § 87(2)(b) (**Allegation B: Abuse of Authority; § 87(2)(g)**)

At approximately 11:37 p.m., outside the 43rd Precinct Stationhouse, Police Officer Edward Bogucki searched the vehicle in which § 87(2)(b) was an occupant. (**Allegation C: Abuse of Authority; § 87(2)(g)**)

During his CCRB interview, on December 22, 2020, Lieutenant Vasquez made misleading official statements. (**Allegation D: Untruthful Statement; § 87(2)(g)**)

§ 87(2)(b) was arrested during this incident for disorderly conduct, unlawful possession of marijuana, windshield tint violations, failure to obey a police officer, resisting arrest, and obstruction of governmental administration in the second degree. (Board Review 01)

PO Bogucki, PO Ortiz, and Lieutenant Vasquez recorded this incident on their body-worn cameras. (Board Review 02)(Board Review 03)(Board Review 04) Civilians provided cell phone videos capturing portions of the incident. The videos do not add relevant information to what is shown in body-worn camera videos.

Findings and Recommendations

Allegation (A) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Police Officer Edward Bogucki threatened § 87(2)(b) with the use of force.

On March 10, 2020, at approximately 8:48 p.m., PO Bogucki and PO Ortiz observed a vehicle with potentially illegal window tints parked against a fire hydrant in front of § 87(2)(b) in the Bronx. They approached the vehicle, which was occupied only by § 87(2)(b). During their conversation with and subsequent arrest of § 87(2)(b), § 87(2)(b) exited § 87(2)(b) and began interacting with the police officers.

§ 87(2)(b) stated to the CCRB that during the incident she attempted, multiple times, to approach the vehicle § 87(2)(b) had been occupying and on the second or third approach, PO Bogucki raised a fist as though he would strike her and said, “back up.” (Board Review 05)

§ 87(2)(b) stated to the CCRB that during the incident, § 87(2)(b) moved toward PO Bogucki and asked what was happening with her brother. He stated PO Bogucki adopted a stance that looked to him as though he were preparing to hit § 87(2)(b) and said to her, “Back the fuck up before I punch you in your face.” (This allegation is not pleaded as § 87(2)(b) did not allege a use of profanity against her.) § 87(2)(b) replied, “Nigga, you ain’t gonna fucking do nothing” and continued cursing at PO Bogucki. § 87(2)(b) said, “§ 87(2)(b) back up because if he hits you I’m gonna go to jail.” § 87(2)(b) backed away from PO Bogucki. (Board Review 06)

§ 87(2)(b) stated that while he was being handcuffed, § 87(2)(b) exited § 87(2)(b). She asked the officers what was going on and approached PO Bogucki. PO Bogucki ordered her to stop. She was approximately four feet from PO Bogucki. PO Bogucki put one hand on his holstered gun and extended his other hand outward in front of him. He ordered § 87(2)(b) to back up and she did so. (Board Review 07)

PO Bogucki's BWC recording from the incident shows between 3:00 and 3:34 that § 87(2)(b) and § 87(2)(b) made several attempts to approach the vehicle in which § 87(2)(b) had been sitting. Between 3:00 and 3:11, while § 87(2)(b) is being handcuffed, § 87(2)(b) approaches the front of the vehicle. PO Bogucki approaches her and orders her to back up multiple times. At approximately 3:05, PO Bogucki's arm is visible as he extends it in front of his body and points at the sidewalk. § 87(2)(b) returns to the sidewalk and PO Bogucki walks away. During this interaction, § 87(2)(b) states multiple times, "don't touch me." PO Bogucki does not appear to make any attempt to touch § 87(2)(b) during the interaction. At approximately 3:21, § 87(2)(b) approaches the trunk of the vehicle. PO Bogucki orders § 87(2)(b) to back up and she stops but does not retreat. At approximately 3:28, § 87(2)(b) begins moving forward again and PO Bogucki approaches her while ordering her repeatedly to back up. § 87(2)(b) retreats from PO Bogucki and asks, "you gonna hit me now?" PO Bogucki's arms are not visible in the recording during this portion of the interaction. (Board Review 02)

PO Bogucki stated that he began directly engaging with § 87(2)(b) and § 87(2)(b) once § 87(2)(b) was in handcuffs. He stated that both § 87(2)(b) and § 87(2)(b) approached the car several times, and he repeatedly ordered them to move back or move to the sidewalk. He stated he pointed at the sidewalk. He stated he may have held up his hand in an open palm "stop" gesture. He stated he did not raise a fist. He stated he did not otherwise threaten § 87(2)(b). He stated he did not know why § 87(2)(b) asked him if he were going to hit her and could not think of anything he did that could have reasonably prompted the question. (Board Review 08)

PO Ortiz stated he was escorting § 87(2)(b) to the RMP when the alleged interaction took place and was not in a position to have witnessed it. (Board Review 09)

NYPD Patrol Guide Procedure Number 221-01 states, "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy." (Board Review 10)

Although it is undisputed that § 87(2)(b) had approached the officers on multiple occasions after they asked her to step back, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: In front of § 87(2)(b) in the Bronx, Lieutenant David Vasquez searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that Lieutenant Vasquez searched the vehicle in which § 87(2)(b) was an occupant. It is undisputed that Lieutenant Vasquez did not have a search warrant for the vehicle. It is undisputed that this search occurred at the scene and was distinct from the inventory search of the vehicle that was conducted and documented by officers at the precinct later that night. It is undisputed that unburned marijuana was discovered on § 87(2)(b)'s person and in the trunk of the vehicle during the inventory search at the stationhouse. It is undisputed that no marijuana or evidence of marijuana was recovered from the cab of the vehicle at any point.

PO Bogucki stated that when § 87(2)(b) opened the door of the vehicle at the start of their interaction, PO Bogucki smelled a strong odor of marijuana coming from the vehicle. PO Bogucki stated he can identify the smell of marijuana due to his training and his experience encountering marijuana as a police officer. He did not see a source of the smell. He stated that no evidence of recently burned marijuana was ever recovered from either § 87(2)(b) or the vehicle. (Board Review 08)

PO Ortiz stated that he opened the passenger side door of § 87(2)(b)'s vehicle and observed nothing that made him suspect marijuana was involved in the incident. He stated that he first became aware of marijuana later in the incident when officers searched § 87(2)(b) and discovered a quantity on § 87(2)(b)'s person. (Board Review 09)

Lieutenant Vasquez initially stated that when he arrived on scene, PO Ortiz told him that the car smelled of marijuana. He stated he based his decision to search the vehicle on that information. (Board Review 11)

Lieutenant Vasquez's body-worn camera video shows that when Lieutenant Vasquez arrived, PO Bogucki gave him a summary of what had happened thus far. PO Bogucki does not mention marijuana. At the end of the summary, Lieutenant Vasquez asks if officers had searched the car. PO Bogucki states that they had not. Lieutenant Vasquez states, "ok, we'll go through the car." (Board Review 04)

After viewing his BWC video, Lieutenant Vasquez recalled that it had been PO Bogucki, not PO Ortiz, who had given him the summary of the incident. He further recalled no officer made him aware of marijuana before he ordered the search of the vehicle. Lieutenant Vasquez recalled that he initially made the decision to do a "plain view" search of the driver's area, and that as he approached the vehicle, he independently smelled the odor of marijuana coming from inside. He stated he could not tell the difference between burned and unburned marijuana. He stated he was hesitant to describe the smell as "strong" and could not say whether in his judgment marijuana had recently been smoked in the vehicle. He stated that no evidence of recently burned marijuana was recovered during the incident. He found no evidence of marijuana when he searched the vehicle on scene. Lieutenant Vasquez stated that he was not aware that marijuana was recovered from § 87(2)(b) on scene. (Board Review 11)

Lieutenant Vasquez's body-worn-camera recording is continuous between Lieutenant Vasquez's arrival on scene through his search of the vehicle. No officer discusses marijuana with him during that time. (Board Review 04)

§ 87(2)(b) stated that persons had smoked marijuana in the vehicle, but not within a month of the incident. He stated that no one, including himself, had smoked marijuana in the vehicle on the day of the incident. (Board Review 07)

In People v. Norman, 142 A.D.3d 1107 (2016), the Appellate Division of the Supreme Court of

New York held that probable cause existed for an officer's warrantless search of a defendant's vehicle "based on an experienced narcotics officer's detection of the odor of burnt marihuana emanating from the defendant's parked vehicle." (Board Review 12) The decision cites People v. Chestnut, 43 A.D.2d 260 (1974), in which the Appellate Division of the Supreme Court of New York held that officers had probable cause to conduct a warrantless search of a defendant's vehicle "where two police officers, qualified by training and experience, detected what they considered to be the distinctive odor of marihuana smoke." (Board Review 13)

Lieutenant Vasquez stated that he smelled marijuana coming from the vehicle and searched it as a result; however, Lieutenant Vasquez's statement changed substantially after he viewed body-worn camera video of the incident that contradicted his initial account. His final recollection was of an odor of marijuana significantly less obvious and intense than the one PO Bogucki described.

PO Ortiz stated there was no evidence of marijuana at all until some was taken from § 87(2)(b) by which point Lieutenant Vasquez had already searched the vehicle. While § 87(2)(b) stated that persons had smoked marijuana in the vehicle in the past, he clarified that no individual had smoked marijuana in the vehicle that day or within a month of it. While marijuana was eventually recovered both on § 87(2)(b)'s person and from the trunk of the vehicle, no evidence of burned marijuana was recovered during the search of § 87(2)(b)'s person, the search of the vehicle on scene, or the inventory search at the stationhouse. None of the body worn camera footage from PO Bogucki, PO Ortiz, or Lieutenant Vasquez contains any mention of the marijuana until after Lieutenant Vasquez has searched the vehicle.

People v. Norman cites "the odor of burnt marihuana." People v. Chestnut cites "the odor of marihuana smoke." Lieutenant Vasquez stated he was generally incapable of distinguishing the smells of burnt and unburnt marijuana, and that during the incident he could not judge whether an individual had recently smoked marijuana in § 87(2)(b)'s vehicle. In any event, the evidence supporting the presence of an odor of marijuana coming from the vehicle, burnt or otherwise, is challenged by the directly contradictory testimony of PO Ortiz, the disparate testimony of Lieutenant Vasquez and PO Bogucki, and the lack of corroborating discussion between officers on BWC. § 87(2)(g)

Allegation (C) Abuse of Authority: Outside the 43rd Precinct Stationhouse, Police Officer Edward Bogucki searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that when his vehicle was towed, he followed the truck to the 43rd Precinct stationhouse and observed officers search his vehicle. (Board Review 06)

PO Bogucki stated that he conducted an inventory search of the vehicle at the 43rd Precinct stationhouse. (Board Review 08)

On March 10, 2020, PO Bogucki prepared NYPD Property Clerk Invoices § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) for § 87(2)(b)'s Honda Accord, valuables found inside the vehicle, and alleged marijuana. He noted the invoicing command as the 43rd Precinct. (Board Review 14)

Patrol Guide Procedure 218-13 requires officers to conduct an inventory search of any property that comes into the custody of [the] Department. It further requires officers to search the interior of a vehicle when the Department takes custody of one, remove all valuables from the vehicle, and invoice them on a separate property clerk invoice. (Board Review 15)

PO Bogucki was required to search the vehicle in which § 87(2)(b) was an occupant and appropriately documented the search. § 87(2)(g)

Allegation (D) Untruthful Statement: Lieutenant David Vasquez provided a misleading official statement to the CCRB.

On December 22, 2020, Lieutenant Vasquez was interviewed at the CCRB.

Lieutenant Vasquez initially stated to the CCRB that he searched the vehicle in which § 87(2)(b) had been an occupant because upon his arrival on scene, PO Ortiz told him he and PO Bogucki had smelled a strong odor of marijuana coming from the vehicle and had observed § 87(2)(b) smoking marijuana. (Board Review 11)

Lieutenant Vasquez's body-worn camera recording from the incident shows that upon his arrival, Lieutenant Vasquez spoke with PO Bogucki, not PO Ortiz, and that PO Bogucki made no mention of marijuana. It further shows that no officer mentioned marijuana before Lieutenant Vasquez searched the vehicle. (Board Review 04)

The CCRB presented this footage to Lieutenant Vasquez. After viewing it, Lieutenant Vasquez stated he recalled that no officer mentioned marijuana before he searched the vehicle. He stated he approached the vehicle with the intention of conducting a search of areas in plain view, and that as he approached the vehicle, he independently smelled the odor of marijuana. (Board Review 11)

Patrol Guide Procedure 203-08 states, "Altering and/or changing a member's prior statement or account when a member of the service is confronted with independent evidence indicating that an event did not occur as initially described, will generally be considered a misleading statement." (Board Review 16)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party. (Board Review 18)
- This is the second CCRB complaint to which § 87(2)(b) has been a party § 87(2)(b)
- PO Bogucki has been a member of service for six years and has been a subject in one other CCRB complaint with two allegations, both of which were substantiated:

- 201905380 involved substantiated allegations of a frisk and a threat of arrest. The board recommended formalized training and the NYPD imposed formalized training.
- § 87(2)(g)
- Lieutenant Vasquez has been a member of service for 25 years and has been a subject in five other CCRB complaints and nine allegations, none of which was substantiated.

§ 87(2)(g), § 87(4-b)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- § 87(2)(b)
- § 87(2)(b)
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- On February 8, 2021, the New York City Office of the Comptroller stated they found no notices of claim regarding this complaint. (Board Review 23)

Squad No.: 09

Investigator: <u>Christopher Olmsted</u>	Investigator Chris Olmsted	August 23, 2021
Signature	Print Title & Name	Date

Squad Leader: <u>Monique West</u>	IM Monique West	8/30/2021
Signature	Print Title & Name	Date

Reviewer: _____	_____	_____
Signature	Print Title & Name	Date